
REMARKS

Claims 1-44 are currently pending in the subject application and are presently under consideration. Claims 6, 29, and 34 have been amended as shown on pp. 2-7 of the Reply. In addition, the drawings have been corrected as indicated below.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Corrected Drawing

Figure 3 as originally filed included a typographical error wherein "topology" was misspelled. Accordingly, a replacement sheet for Figure 3 correcting such spelling error is submitted with this Reply.

II. Rejection of Claim 6 Under 35 U.S.C. §112

Claim 6 stands rejected under 35 U.S.C. §112 because the Examiner contends that it is unclear because it is incomplete. Claim 6 has been amended. Accordingly, withdrawal of this rejection is respectfully requested

III. Rejection of Claims 1-44 Under 35 U.S.C. §103(a)

Claims 1-44 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lumelsky *et al.*, US 6,463,454 B1 ("Lumelsky"). Claims 29 and 34 have been amended. Applicants' representative respectfully submits that this rejection should be withdrawn for at least the following reasons. The subject invention is not obvious in view of Lumelsky because this reference does not teach or suggest all claim limitations, in particular ***managing applications across a plurality of members via employment of a topology manager*** as recited in independent claims 1, 29 and 34.

To establish a *prima facie* case of obviousness, all of the claim limitations must be taught or suggested by the prior art. (See *In re Rijckaert*, 9 F.3d 1531, 1533-34 (Fed. Cir. 1993); and *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Only if the examiner establishes a *prima facie* case of obviousness does the burden of coming forward with evidence or argument shift to the

applicant. (See *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). For a claim limitation to be inherently present:

the extrinsic evidence ‘must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, **may not be established by probabilities or possibilities**. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’ (*In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations omitted)(emphasis added)).

Moreover, “when the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference.” (*In re Rijckaert*, 9 F.3d 1531, 1533-34 (Fed. Cir. 1993) (citing *In re Yates*, 663 F.2d 1054 (CCPA 1981); see also *In re Grasselli*, 713 F.2d 731, 739 (Fed. Cir. 1983)).

In evaluating obviousness, the Federal Circuit has held that the PTO must conduct the factual inquiry as outlined in *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). The factual inquiry to be conducted includes determining: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. (See *Graham*, 383 U.S. at 17-18; *Miles Labs, Inc., Inc. v. Shandon Inc.*, 997 F.2d 870, 877 (Fed. Cir. 1993)). The PTO must “not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion.” (*In re Sang Su Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002)). The PTO cannot rely merely on conclusory statements and assertions of “common sense” to remedy deficiencies of the cited references. (See *In re Sang Su Lee*, 277 F.3d at 1344 (citing *In re Zurko*, 258 F.3d 1379, 1385 (Fed. Cir. 2001) “deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'”)).

In rejecting the claims, the Examiner clearly states that Lumelsky does **not** expressly disclose all of the limitations of the claims, in particular the topology manager. (See Office Action dated May 6, 2004 at p. 3, “Lumelsky does not expressly disclose topology manager as claimed;” p. 4, “Lumelsky does not expressly disclose topology manager for communication in

between members of the network as claimed;” and p. 5, “Lumelsky does not expressly disclose a topology manager . . . “). The Examiner instead argues that a topology manager is inherent in the network manager because the “network manager manages network members, resources, elements based on the network topology.” (Office Action at pp. 3, 4 and 5).

The topology manager of the claimed invention manages applications across a plurality of members. These management functions include (but are not limited to) synchronizing the members in accordance with an authoritative copy of content and configuration information for the entity. (See specification at p. 11, lines 16-19; *see also* p. 4, lines 20-27 and Fig. 3). By way of example, the topology manager facilitates member cooperation by determining if the members are in agreement with the virtual application manager, which contains a master copy of content. (See specification at p. 8, lines 5-14 and p. 10, lines 1-6). As noted by the Examiner, Lumelsky does not expressly disclose such a topology manager. Indeed, the word “topology” does not even appear in the Lumelsky reference. Moreover, there is nothing to teach or suggest that a topology manager, which is operable to synchronize the members in accordance with an authoritative copy of content and configuration information for the entity, is *necessarily* present in any of the figures and sections cited by the Examiner.

To support the rejection of the claims, the Examiner contends that figure 12 of Lumelsky discloses “a network manager similar to the claimed network topology manager for managing network resources and services availability . . .” (Office Action at pp. 2-3, 4, and 5).

Applicants’ representative respectfully disagrees with this contention. Figure 12 of Lumelsky discloses a system for regulating capacity, but does not disclose or suggest any system elements that are analogous to the topology manager (*e.g., operable to synchronize members in accordance with an authoritative copy of content and configuration information for the entity*). The Examiner further contends that Lumelsky discloses “an application manager for maintaining applications on the network” and cites to figure 4 and a few sections of the Lumelsky reference. (Office Action at pp. 2-3, 4 and 5). Figure 4 of Lumelsky and the section at col. 6, line 61 to col. 7, line 24 disclose a distributed computing system, but do not disclose or suggest any system elements that are analogous to the topology manager (*e.g., operable to synchronize members in accordance with an authoritative copy of content and configuration information for the entity*). The sections at col. 4, lines 37-55 and col. 6, lines 45-50 cited by

the Examiner describe only the objectives to be achieved by the system, and do not disclose or suggest a topology manager.

As discussed above, none of the figures or sections cited to by the Examiner disclose a topology manager, either expressly or inherently. The Examiner has made clear that this claim limitation is not expressly disclosed and has not cited to any teaching or suggestion that discloses that the limitation is *necessarily* present. The Examiner instead relies on the conclusory statement that a topology manager is “implied” in the network manager “because the network manager manages network members, resources, elements based on the network topology.” (Office Action at p. 3, 4 and 5). Given the lack of an explicit or inherent disclosure of the topology manager, Applicants’ representative respectfully submits that this is precisely the mere conclusory statement based on “common sense” reasoning that the Federal Circuit has held is insufficient to remedy deficiencies in the cited prior art. (*See In re Sang Su Lee*, 277 F.3d at 1344).

For the foregoing reasons, Lumelsky does not teach or suggest, either expressly or inherently, a topology manager as recited in independent claims 1, 29, and 34 (and the claims which depend there from). This rejection should be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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